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DANIEL [redacted] PETITIONER AND LEWIS M. [redacted] UNITED STATES DISTRICT JUDGE FOR THE [redacted] DISTRICT OF [redacted]

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES [redacted] COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 419

DANIEL K. CATLIN, FREDERICK PITZMAN AND LEWIS M. RUMSEY, JR., AS TRUSTEES UNDER DEED DATED FEBRUARY 1, 1921, AND RECORDED IN THE PUBLIC RECORDS OF MADISON COUNTY, ILLINOIS, IN BOOK 471, AT PAGE 621, COMMONLY KNOWN AS THE COOL LAND SYNDICATE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 47–52) is reported in 142 F. 2d 781. The district court wrote no opinion.

JURISDICTION

The judgment of the circuit court of appeals sought to be reviewed was entered on June 2,

1944 (R. 52). The petition for a writ of certiorari was filed on September 1, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a judgment on a declaration of taking and a subsequent order denying a motion to vacate such a judgment were final and appealable, particularly where the Government, by virtue of war statutes, was already in possession of the property at the time the declaration of taking was filed, and, if so, whether the appeal was timely.

STATUTES INVOLVED

Section 128 of the Judicial Code, as amended (28 U. S. C. 225 (a)), the Declaration of Taking Act of February 26, 1931 (40 U. S. C. 258a–258e), and the "War Purposes Act of 1917" (50 U. S. C. 171), are printed in the Appendix, *infra*, pp. 19–23.

STATEMENT

The United States on March 31, 1942, instituted condemnation proceedings under the "War Purposes Act of 1917" [1] to acquire 1,113 acres of land in Madison County, Illinois, "for use in the establishment of the Granite City Engineer Branch Depot, Granite City, Illinois" (R. 2–11, 33). The

[1] Act of August 18, 1890, 26 Stat. 316, as amended by the Acts of July 2, 1917, 40 Stat. 241, and April 11, 1918, 40 Stat. 518 (50 U. S. C. 171).

petition for condemnation alleged that it was being filed at the direction of the Attorney General, pursuant to the request of the Secretary of War (R. 2, 3); that the Act of August 18, 1890, as amended in 1917 and 1918 (50 U. S. C. 171), authorized the Secretary of War to cause proceedings to be instituted to condemn land "needed for the site, location, construction and prosecution of works for fortifications, coast defenses, military training camps," etc. (R. 3); that upon the filing of a petition to acquire such lands in time of war "immediate possession thereof may be taken" (R. 3); that funds for the acquisition of lands needed "for the prosecution of military affairs of the United States in connection with the present emergency" had been appropriated by the Act of December 17, 1941, 55 Stat. 810, 812 (R. 3); and that the apparent owners of the property being condemned included the Cool Land Syndicate (R. 4). The petition concluded with a prayer that the court enter an order of immediate possession and that just compensation be ascertained (R. 4–5). The court on the same day that the petition was filed entered an order of immediate possession. The War Department thereupon went into possession of the property and proceeded with the construction of an Army Engineer Branch Depot. (R. 13, 47.)

Thereafter, as the necessary appraisal data and title information were obtained, declarations of taking were signed by the Secretary of War and

filed in court, pursuant to the Declaration of Taking Act of February 26, 1931 (40 U. S. C. 258a). Included in Declaration of Taking No. 1, filed November 12, 1942, was Tract ED–7 containing 318.64 acres for which $43,579 was deposited in court as estimated compensation. (R. 13, 16, 21.) The Cool Land Syndicate was named as the purported owner (R. 16). The court on November 12, 1942, entered a "judgment" on this declaration of taking, decreeing that title to the tracts therein described had vested in the United States upon the filing of the declaration of taking and that "the right to just compensation for the same is now vested in the persons entitled thereto." This judgment provided that "this cause is held open for such further and other orders, judgments and decrees as may be necessary and proper in the premises". (R. 23–26.)

Approximately 11 months later the petitioners, as trustees of the Cool Land Syndicate, filed a motion asking the court to vacate the judgment on this declaration of taking and to dismiss the petition in condemnation, insofar as it related to Tract ED–7, on the ground that the requisite jurisdictional facts and statutory authority had not been sufficiently alleged in the condemnation petition (R. 29–31).

Although of the opinion that the original petition was adequate, the Government asked and obtained leave to amend the petition so as to make

the Secretary of War's letter of March 26, 1942, to the Attorney General, a part thereof (R. 31–34). Petitioners thereupon filed an amended motion to vacate and to dismiss, which was based solely upon the ground that, it appearing from the Secretary's letter that the land was to be used for the establishment of an engineer depot and "related military purposes," the proceeding did not involve a condemnation for one of the purposes specified in the "War Purposes Act of 1917" (R. 34–36). The amended motion was denied on November 30, 1943 (R. 37).

Petitioners, on December 9, 1943, took an appeal to the Circuit Court of Appeals for the Seventh Circuit from the judgment on the declaration of taking and from the subsequent order denying their motion to vacate that judgment. The appellate court held that the orders attacked were not final judgments and accordingly dismissed the appeal (R. 47–52).

ARGUMENT

1. Except in situations not here material, the jurisdiction of the federal appellate courts is by statute limited to the review of "final decisions," 28 U. S. C. 225 (a). A "final decision" is one that terminates the litigation on the merits and leaves nothing for the trial court to do but execute the judgment in case of affirmance. *St. Louis I. M. & S. R. R. Co.* v. *Southern Ex. Co.*, 108 U. S. 24, 28; *State of Washington* v. *United*

States, 87 F. 2d 421, 433 (C. C. A. 9). Consequently, a condemnation proceeding is not reviewable "until after final judgment, disposing of the whole case, and adjudicating all the rights, *whether of title or of damages*, involved in the litigation. The case is not to be sent up in fragments * * *." [Italics supplied.] *Luxton* v. *North River Bridge Co.*, 147 U. S. 337, 341; *Southern Ry. Co.* v. *Postal Telegraph Co.*, 179 U. S. 641, 643; *Grays Harbor Co.* v. *Coats-Fordney Co.*, 243 U. S. 251, 256; *Wick* v. *Superior Court*, 278 U. S. 574, 575; *Washington ex rel. McPherson Bros. Co.* v. *Superior Court*, 274 U. S. 726; *Washington ex rel. Perry* v. *Superior Court*, 276 U. S. 626; *Ornstein* v. *Chesapeake & Ohio Ry. Co.*, 284 U. S. 572; *Public Service Co.* v. *Lebanon*, 305 U. S. 558, 671; *Dade County, Fla.* v. *United States*, 142 F. 2d 230 (C. C. A. 5); *Dieckmann* v. *United States*, 88 F. 2d 902 (C. C. A. 7); *Turnbull* v. *United States*, 139 F. 2d 126 (C. C. A. 6); cf. *Collins* v. *Miller*, 252 U. S. 364, 370; *United States* v. *Florian*, 312 U. S. 656.

In many States "judgments of condemnation" sustaining the condemnor's right to acquire particular property by condemnation are by reason of special statutes reviewable in the state courts in advance of the determination of just compensation. But neither state statutes nor the conformity provisions of the federal condemnation acts abrogate the plain requirements of the Judicial

Code limiting review by the Federal courts to "final decisions." *Dieckmann* v. *United States,* 88 F. 2d 902 (C. C. A. 7). Consequently this Court has repeatedly refused to review such state court decisions, in advance of a remand for determination of just compensation, "for want of a final judgment." E. g. *Wick* v. *Superior Court,* 278 U. S. 574, 575; *Public Service Co.* v. *Lebanon,* 305 U. S. 558, 671. Since just compensation for Parcel ED–7 has not yet been determined, it seems clear, under the foregoing authorities, tha the judgment and order sought to be reviewed are not final and appealable.,

Certainly, an order denying a motion to dismiss a complaint in an ordinary civil action is not immediately reviewable even when the motion is based on jurisdictional grounds. *Roche* v. *Evaporated Milk Assn.,* 319 U. S. 21. And an order denying a motion to dismiss a condemnation petition, even where constitutional objections are raised, cannot be deemed a final judgment. *Dieckmann* v. *United States,* 88 F. 2d 902 (C. C. A. 7). Such a motion is comparable to a demurrer at common law and when overruled is not reviewable until a final judgment has been entered. Otherwise a litigant, each time that he was dissatisfied with a ruling made in the course of a particular proceeding, could file a motion to set aside the objectionable ruling, and, when that motion was denied, he could prosecute a piece-meal

appeal. It is only when the motion to set aside is directed at a judgment which is itself final that an appeal may be immediately taken. *Glinski* v. *United States,* 93 F. 2d 418 (C. C. A. 7); *Republic Supply Co. of California* v. *Richfield Oil Co.,* 74 F. 2d 909, 910 (C. C. A. 9). Therefore, the order of November 30, 1943, insofar as it denied petitioners' motion to dismiss the condemnation petition, cannot be deemed a final and reviewable judgment. If a review is to be had at this time, it can only be on the theory that the judgment which the court entered on the declaration of taking in November 1942 was itself final and appealable and that the order of November 30, 1943, denying a motion to vacate such judgment is likewise final and appealable.

We submit, for reasons now to be discussed, that a so-called judgment on a declaration of taking is not a "final decision" as that term is used in 28 U. S. C. 225 (a). The Declaration of Taking Act contains no provision requiring the court to enter a "judgment" or "order" on a declaration of taking. The Act provides that "upon the filing of said declaration of taking and of the deposit in the court, * * * title to the said lands * * * shall vest in the United States of America." "Clearly under provisions of the statute, condemnation is effected and title completely vested in the Government by the mere filing of a declaration of taking and a judgment adjudging title in the

United States is wholly unnecessary. Such is the statutory mandate." *United States* v. *Sunset Cemetery Co.*, 132 F. 2d 163, 164 (C. C. A. 7); *Dade County, Fla.*, v. *United States*, 142 F. 2d 230, 231 (C. C. A. 5). But in the interests of orderly procedure, the Department of Justice has adopted the policy of asking district courts to enter a "judgment on the declaration of taking." Most district judges have complied. This "judgment" is obtained, generally *ex parte*, so as to advise the owners of the action that has been taken and for title recordation purposes. Thus, the Act does not even provide for a judgment on a declaration of taking and, of course, it makes no provision for an interlocutory appeal. On the contrary, it provides that the declaration may be filed "at any time before judgment" and that "compensation shall be ascertained and awarded in said proceeding and established by judgment therein." The statute further provides that if the amount of the final award exceeds the deposit, "the court shall enter judgment against the United States for the amount of the deficiency." Subsequent sections of the Act (40 U. S. C. sec. 258d, e) refer to taking possession and title "in advance of *final judgment* in condemnation proceedings" and the Act is entitled (46 Stat. 1421) "An Act to expedite the construction of public buildings and works outside of the District of Columbia by enabling possession and title of sites to be taken in advance of *final*

judgment in proceedings for the acquisition thereof under the power of eminent domain." [Italics supplied.] Thus, the only judgment referred to in the statute is the usual final condemnation judgment entered after compensation has been determined.

These provisions of the Declaration of Taking Act make it clear that Congress did not intend a different rule of appealability to prevail in those cases where a declaration of taking is used than that followed in the usual condemnation case, where no appeal will lie until just compensation has been ascertained. *Dade County, Fla.* v. *United States,* 142 F. 2d 230, 231 (C. C. A. 5). The final judgment contemplated by the Act is the one determining the deficiency due the condemnee or, if the deposit was too high, the amount which should be refunded to the United States. *United States* v. *Miller,* 317 U. S. 369; *Garrow* v. *United States,* 131 F. 2d 724 (C. C. A. 5), certiorari denied, 318 U. S. 765.

As this Court has recently emphasized, the mere fact that the rule limiting appeals to final judgments may result in inconvenience and unnecessary trials, if it is ultimately decided that the district court erred, constitutes no proper ground for permitting preliminary and piecemeal appeals. To do so would be a plain evasion of the congressional enactment limiting review to "final de-

isions." *Roche* v. *Evaporated Milk Assn.*, 319 S. 21, 30. There are strong policy considera-ions in condemnation cases which support the imitation of appeal to the judgment rendered fter just compensation has been determined. At-acks upon the Government's power to condemn ave very rarely been successful.[2] In the great ajority of the cases, to permit appeals from judgments" entered upon declarations of taking ould result simply in multiplying appeals[3] and nnecessary delay in the entry of the concluding

[2] The decision in *Puerto Rico Railway Light and Power o.* v. *United States*, 131 F. 2d 491 (C. C. A. 1), where the urt entertained an appeal, did not result in ousting the overnment, because immediately after the decision the roperty was taken under the Second War Powers Act. The resent petitioners conceded in the court below that the Gov-rnment could undoubtedly acquire the property here in-olved for the use in question under the Second War Powers ct (Act of March 27, 1942, 56 Stat. 177, 50 U. S. C. App. upp. III, 632), a statute which was on the books when the stant proceeding was filed. Therefore, even if this case ere reversed, possession could be retained by amending the leadings to involve specifically the Second War Powers Act.

[3] In order to cut down liability for interest and to provide he dispossessed landowner with some money pending the udicial determination of just compensation, it is the practice f the Government to file declarations of taking in most con-emnation proceedings. If judgments on such declarations f taking are held to be appealable, considering the present uantity of land now being condemned for war purposes, he appellate courts will be confronted with scores of needless iecemeal appeals. We have found that where the ultimate ward is satisfactory to the condemnees numerous technical bjections are never pressed.

judgments.[4] Such delays in ascertaining compensation should be avoided. Neighboring witnesses for the landowner and expert witnesses for the Government who saw the property before the improvements were made may be difficult to locate when the case finally comes on for trial. Moreover, during the period of delay the landowner is deprived of compensation except for the amount deposited with a declaration of taking and the United States is forced to pay 6 percent interest on the amount by which the award exceeds the deposit. It is thus advantageous both to the Government and to the owners that appeals should not be permitted until the ultimate judgment is entered.

Although the decisions of this Court and the Declaration of Taking Act itself seem to indicate that a so-called judgment on a declaration of taking is not final and appealable, yet, as peti-

[4] This case is an example of the delay which results. The judgment on the declaration of taking was entered on November 12, 1942 (R. 23). The order refusing to vacate the judgment on the declaration of taking was entered on November 30, 1943, in response to a motion made eleven months after the judgment was entered (R. 36). The issue of just compensation was to be heard at a trial set for December 20, 1943. On December 9, 1943, petitioners filed their notice of appeal (R. 37), thus necessitating a postponement of the valuation trial. Had they waited until after that trial, all reviewable issues could have been heard on a single appeal. As it is, if certiorari should be granted and disposed of in regular course, it is unlikely that the question of valuation will be determined until late in 1945.

tioners have indicated, three circuit courts of appeal have permitted condemnees to take appeals in advance of the determination of just compensation. *City of Oakland* v. *United States*, 124 F. (2d) 959 (C. C. A. 9), certiorari denied, 316 U. S. 679; *United States* v. *243.22 Acres of Land*, 129 F. 2d 678 (C. C. A. 2), certiorari denied, 317 U. S. 698; *Puerto Rico Railway Light and Power Co.* v. *United States*, 131 F. 2d 491 (C. C. A. 1). However, those decisions are not necessarily in conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit in *Dade County, Fla.* v. *United States*, 142 F. 2d 230, nor with that of the Circuit Court of Appeals for the Seventh Circuit in the instant case (R. 47–52). In the three cases on which petitioners rely to establish a conflict (Pet. 9, 13–21) the Government resorted to the Declaration of Taking Act in order to obtain possession of the property. The judgments on the declarations of taking there appealed from contained court orders granting the Government possession. As indicated in the *Dade County* case (142 F. 2d at 231), the Declaration of Taking Act brings into play the interposition of the District Court before the Government can obtain possession and hence involves judicial action. But in the *Dade County* case and in the instant case judicial permission was not required for the taking of possession. The Government was already in possession of the

property under war statutes where no court orders granting possession are required, with authority to commence immediate construction. Second War Powers Act of March 27, 1942 (50 U. S. C. App. 632); War Purposes Act of 1917 (50 U. S. C. 171); *Dade County, Fla.* v. *United States*, at p. 231; *United States* v. *Merchants Transfer & Storage Company* (C. C. A. 9); see R. 47. In such cases declarations of taking are filed after possession has been obtained primarily for the purpose of providing the landowner with some compensation on account, and thus reducing the interest liability of the United States. See *United States* v. *Miller*, 317 U. S. 369, 381. Hence, the judgments on the declarations of taking in the *Dade County* case and in the instant case, unlike those involved in the First, Second, and Ninth Circuit cases, did not operate to deprive the landowners of any possessory rights. Therefore, the alleged conflict on which petitioners rely for the granting of certiorari does not, we think, really exist. It seems clear that "judgments" on declarations of taking are not appealable in the situations presented by the *Dade County* case and the instant case, where the Government was already in possession of the property under other statutes. The determination as to whether judgments on declarations of taking are or are not final in situations like those involved in the First, Second, and Ninth Circuit cases may well await

a case where the possession is transferred by judicial action pursuant to the Declaration of Taking Act.

Moreover, if petitioners were right in their conclusion that the "judgment" on the declaration of taking in the instant case was a final decision, it would seem evident that their appeal is not timely. That judgment was entered on November 12, 1942. The appeal was not taken until December 9, 1943, months after the prescribed three months appeal period (28 U. S. C. 230) had expired. The Civil Procedure Rules not being applicable,[5] this final "judgment" remained within the breast of the court only during the term at which it was entered. See *United States* v. *Mayer*, 235 U. S. 55, 67, and cases cited. Several terms of court passed before, eleven months later, the motion to vacate was filed (see R. 1, 2, 23, 29; cf. 28 U. S. C. 152).[6] This motion, consequently,

[5] Rule 81 (a) (7) provides that "in proceedings for condemnation of property under the power of eminent domain, these rules govern appeals but are not otherwise applicable.

[6] While the "judgment" on the declaration of taking provided that "this cause is held open for such further and other orders, judgments, and decrees as may be necessary and proper in the premises" (R. 26), it would not seem that this reservation held open the term at which the "judgment" on the declaration of taking was entered for the purpose of an attack upon that "judgment." The judgment merely confirmed that which had already occurred irrespective of the judgment. The Government had taken possession of the property under the War Purposes Act of 1917, and title had passed to it upon the filing alone of the declaration of taking accompanied by the deposit in court of the estimated com-

did not suspend the "finality" of the judgment of November 12, 1942. The District Courts have jurisdiction of suits "brought by the United States" (28 U. S. C. 41(1)), and the attack upon the judgment in petitioner's motion to vacate, as finally amended, was solely that the court should have held that there was no right to condemn in the particular case. Consequently there is not involved a situation of a void judgment but at most a judgment which was claimed to be erroneous. Since the running of the appeal period was not delayed by the motion to vacate, the appeal is, we submit, untimely even if petitioners' argument as to the finality of the judgment were accepted.

2. Additionally, the question on the merits which petitioners sought to have decided in the court below is, we think, sufficiently without substance as to have warranted a dismissal of the appeal upon that ground. Sites for engineer supply depots—which receive, collect, and distribute to our troops on various battle fronts the supplies and equipment required in digging foxholes and trenches, constructing pill boxes, gun emplacements, etc.—would certainly seem to be acquirable under a war statute authorizing the condemnation of land "needed for the * * * prosecution of

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pensation. The "further orders, judgments, and decrees" for which the cause was held open related undoubtedly to those orders, judgments, and decrees which would deal with the determination and distribution of just compensation.

works for fortifications." 50 U. S. C. 171; *City of Richmond* v. *Richmond & Danville R. R. Co.*, 21 Gratt. 604, 608 (Va. 1872); *Dictionary of United States Army Terms*, War Department Technical Manual TM 20–205 (1944), defining "fortification," "field fortification"; *Modern Military Dictionary*, Garber and Bond (2d ed. 1942), defining "works," "field fortification," "field fortification, items of"; Army Regulations 700–10, sec. I, par. 2 (1936), defining "arm or service depots." The statute itself recognizes an urgency in time of war by permitting immediate possession, use, and occupancy of the land for "military purposes." It does not contemplate, obviously, that the Secretary of War should be held to a nice discrimination in definition. Certainly, only in a most flagrant situation would his judgment be subject to judicial reversal (cf. *United States* v. *243.22 Acres of Land*, 129 F. 2d 678, 683 (C. C. A. 2), certiorari denied, 317 U. S. 698). This is not such a case.

Moreover, the Second War Powers Act of March 27, 1942 (50 U. S. C., App. Supp. III, 632), which amended the War Purposes Act of 1917, although not referred to in the Government's petition for condemnation, was in effect when that petition was filed. It authorizes "The Secretary of War, the Secretary of the Navy, or any other officer, board, commission, or governmental corporation" to institute condemnation proceedings

to acquire property that shall be deemed necessary "for military, naval, or other war purposes" and provides for immediate possession and occupancy, use, and improvement of the property. Petitioners conceded below that this statute would have justified the taking. Furthermore, it was not the purpose of that Act to enlarge in any essential respect the *basic powers* of the *Secretary of War* under the 1917 Act, but merely to extend them to other war agencies. S. Rep. No. 989, 77th Cong., 2d sess. (1942), p. 4.

CONCLUSION

The decision of the circuit court of appeals is correct and there is no real conflict of decisions. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
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NORMAN M. LITTELL,
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OCTOBER 1944.

APPENDIX

Section 128 of the Judicial Code, 28 U. S. C. 225 (a) provides:

> The circuit courts of appeal shall have appellate jurisdiction to review by appeal final decisions—
>
> First. In the district courts, in all cases save where a direct review of the decision may be had in the Supreme Court under section 345 of this title.

The Declaration of Taking Act of February 26, 1931, 46 Stat. 1421, 40 U. S. C. 258a–258e, provides:

> CHAP. 307.—
>
> An Act To expedite the construction of public buildings and works outside of the District of Columbia by enabling possession and title of sites to be taken in advance of final judgment in proceedings for the acquisition thereof under the power of eminent domain.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in any proceeding in any court of the United States outside of the District of Columbia which has been or may be instituted by and in the name of and under the authority of the United States for the acquisition of any land or easement or right of way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are thereby

taken for the use of the United States. Said declaration of taking shall contain or have annexed thereto—

(1) A statement of the authority under which and the public use for which said lands are taken.

(2) A description of the lands taken sufficient for the identification thereof.

(3) A statement of the estate or interest in said lands taken for said public use.

(4) A plan showing the lands taken.

(5) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.

Upon the filing said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency.

Upon the filing of a declaration of taking, the court shall have power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner. The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.

SEC. 2. No appeal in any such cause nor any bond or undertaking given therein shall operate to prevent or delay the vesting of title to such lands in the United States.

SEC. 3. Action under this statute irrevocably committing the United States to the payment of the ultimate award shall not be taken unless the chief of the executive department or agency or bureau of the Government empowered to acquire the land shall be of the opinion that the ultimate award probably will be within any limits prescribed by Congress on the price to be paid.

SEC. 4. The right to take possession and title in advance of final judgment in condemnation proceedings as provided by this Act shall be in addition to any right, power,

or authority conferred by the laws of the United States or those of any State or Territory under which such proceedings may be conducted, and shall not be construed as abrogating, limiting, or modifying any such right, power, or authority.

SEC. 5. In any case in which the United States has taken or may take possession of any real property during the course of condemnation proceedings and in advance of final judgment therein and the United States has become irrevocably committed to pay the amount ultimately to be awarded as compensation, it shall be lawful to expend moneys duly appropriated for that purpose in demolishing existing structures on said land and in erecting public buildings or public works thereon, notwithstanding the provisions of section 355 of the Revised Statutes of the United States: *Provided,* That in the opinion of the Attorney General, the title has been vested in the United States or all persons having an interest therein have been made parties to such proceeding and will be bound by the final judgment therein.

The pertinent portions of the "War Purposes Act of 1917", 50 U. S. C. 171, reads as follows:

The Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, temporary use thereof or other interest therein, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications, coast defenses, military training camps, and for the con-

struction and operation of plants for the production of nitrate and other compounds and the manufacture of explosives and other munitions of war and for the development and transmission of power for the operations of such plants; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: * * * *And provided further,* That when such property is acquired in time of war, or the imminence thereof, upon the filing of the petition for the condemnation of any land, temporary use thereof or other interest therein or right pertaining thereto to be acquired for any of the purposes aforesaid, immediate possession thereof may be taken to the extent of the interest to be acquired and the lands may be occupied and used for military purposes.

U. S. GOVERNMENT PRINTING OFFICE: 1944